

REMARKS

As explained below, the outstanding rejection fails to meet the criteria of U. S. C. 102(a) because claim 8 requires "means for placing reagent containers or vial containers into the carousel ". The only item disclosed by Thompson as being placed into a carousel is a reaction cuvette and Thompson does not disclose a rack for holding reaction cuvettes.

Claim Rejections –35 USC §102

Claims 1-7 are rejected under 35 U. S. C. 102(a) as being anticipated by U. S. Patent 6,571,934 to Thompson et al. Thompson is cited for disclosing a bi-directional transport 90LT with shuttles 80, 80A to position a sample rack at a sampling location on the transport on in a buffer zone 84. Thompson further discloses a single carousel 12 having inner and outer cuvette circles 14 and 16 for holding reaction cuvettes in ports 72 and 74.

The standards for an anticipation rejection are high and have been consistently maintained. Anticipation under Section 102 can only be found if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985) In addition, for a prior art reference to anticipate, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990). To substantial a proper rejection under Section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E. I. DuPont*, 750 F.2d 1569 (Fed. Cir. 1984). The prior art reference also must show the *identical* invention "in as complete detail as contained in the . . . claim" to support a prima facie case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). Accordingly, applicant need only point to a single element not found in the cited reference to demonstrate that the reference fails to anticipate the claimed subject matter.

The present rejection fails to meet these criteria because, as explained below, the only item placed into Thompson's carousel is a reaction cuvette and Thompson does not disclose a rack for holding cuvettes. The Examiner stated that the "sample tube rack is equivalent to the container loading tray" . . . however, Thompson's sample tube racks (and the tubes container therein) remain on the analyzer's operating surface between the time they are placed on and removed from the analyzer. Thus, Thompson does not disclose means for placing reagent containers or vial containers into a carousel as required by claim 8 and the rejection under 35 USC 102(a) is unsubstantiated.

The Examiner disagrees that claim 8 is distinguished over Thompson because, "Thompson et al teach cuvette racks (container trays), inner and outer carousels, storage areas and a bidirectional linear shuttle." However, Thompson does not teach or inherently disclose means for placing reagent containers or vial containers (or sample racks) into either of the carousels as required by claim 8.

Thompson's sample racks 42 are disposed at a rack inload position on the top operating surface (76) of analyzer (10), are moved to a sampling zone 82, are possibly retained in a buffer zone 82, and are then moved to a zone where they may be removed from the analyzer. Col. 7, line 42 to Col. 8, line 39. There is simply no hint or disclosure of means for placing sample racks into either of the carousels as required by claim 8.

For the reasons explained above, Thompson does not teach, expressly or inherently, each and every element of the as-claimed container supply system having a loading tray, a carousel, a storage tray positioned between the loading tray and the carousel, and shuttle means for placing containers into the carousel. Consequently there is no basis for a rejection under 35 U. S. C. 102(a) over U. S. Patent 6,571,934 to Thompson et al, and applicant respectfully requests that this rejection be withdrawn.

Conclusion

Applicants believe that this application contains patentable subject matter and that the foregoing amendments and explanation provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



Leland K. Jordan
Registration No. 36,560
Agent for Applicant

DADE BEHRING INC.
1717 Deerfield Road, Box 778
Deerfield, IL 60015-778
Phone: (847) 267-5365